

IN THE MATTER OF: )  
)  
North Dakota State Board of Medical )  
Examiners - Investigative Panel B )  
)  
Complainant, )  
)  
)  
vs. )  
)  
)  
Miles J. Jones, M.D., )  
)  
)  
Respondent. )

On November 20, 2001, a Complaint was filed with the North Dakota Board of Medical Examiners ("Board") by its Investigative Panel B ("Panel B"), requesting revocation of the license to practice medicine in North Dakota of the Respondent, Miles J. Jones, M.D. of Lee's Summit, MO. ("Jones"). The Complaint was served on Jones on March 20, 2002.

On April 4, 2002, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings ("OAH") to conduct a hearing and to issue

recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On April 8, 2002, the undersigned ALJ was designated to preside.

On April 15, 2002, the ALJ issued a Notice of Hearing which scheduled a May 15, 2002, hearing. The hearing was held as scheduled on May 15, 2002, in the Office of Administrative Hearings, Bismarck, North Dakota. Special Assistant Attorney General, John M. Olson, represented Panel B. He called six witnesses to testify. He offered 18 exhibits as evidence, all of which were admitted. Jones was not present at the hearing; neither was Jones represented at the hearing.

On May 14, 2002, the ALJ received from Jones a "Respondent's Brief in Support of Motion to Dismiss," "Motion to Dismiss," proposed "Order to Dismiss," and several attached pages from two North Dakota cases, which Jones claimed supported his arguments regarding the Motion to Dismiss. Panel B did not have time to respond to Jones' motion prior to the hearing, but counsel did respond at the hearing.

During the course of the hearing, the ALJ received a facsimile "Motion to Continue Hearing." Jones faxed the motion to the ALJ's office, OAH, at 10:09 a.m. on May 15, 2002. OAH support staff immediately brought it into the hearing. The hearing started at 9:00 a.m. At the hearing, counsel for Panel B also responded to Jones' Motion to Continue Hearing.

As a result of the evidence presented at the first hearing and the oral argument made by counsel for Panel B, the administrative law judge issued recommended findings of fact and conclusions of law and a recommended order on May 21, 2002. Jones' Motion to Dismiss was denied. Jones' Motion to Continue Hearing was also denied. The ALJ recommended revocation of Jones' license to practice medicine in North Dakota. On July 26, 2002, the Board issued its order adopting the ALJ's May 21 recommended decision, ordering Jones' license revoked.

Jones appealed the Board's order to the District Court. On December 10, 2002, the District Court granted Jones' request for leave to offer evidence in this matter under N.D.C.C. § 28-32-45. Jones' appeal was dismissed as moot. The matter was remanded to the Board to give Jones an opportunity to offer evidence.

On January 16, 2003, the Board requested the designation of an Administrative Law Judge to conduct appropriate administrative proceedings in this matter. On January 17, 2003, the same ALJ originally designated was again designated.

On January 22, 2003, the ALJ issued a Notice of Prehearing Conference scheduling a prehearing conference for January 28, 2003. The conference was held as scheduled and attended by the ALJ, Mr. Okon, and Ms. Karen L. McBride, Bismarck, counsel for Jones. On January 29, 2003, the ALJ issued a Prehearing Conference Summary and Notice of Hearing on Remand. The summary set forth the hearing procedures and the notice scheduled a May 13 and 14, 2003, hearing.

The hearing on remand was held as scheduled. Mr. Olson again represented Panel B. Ms. McBride represented Jones. Jones was present at the hearing and testified in his own behalf. At the May 2003 hearing, Jones case was presented first. Ms. McBride recalled three witnesses from the first hearing to cross-examine, Mr. Erickson, Dr. Tangedahl, and Mr. Sletten. Mr. Olson questioned on redirect. Ms. McBride called five other witnesses to testify, including Jones and two experts. Mr. Olson called two expert witnesses in the Board's rebuttal case, neither of which testified at the first hearing. Besides the exhibits offered at the 2002 hearing, which are already a part of the record of this matter, the parties offered many additional exhibits. *See* exhibit lists from May 2002 and 2003 hearings. (Exhibits from the 2002 hearing will be referred to by just their original exhibit number. Respondent Jones' exhibits from the 2003 hearing will

be referred to as R-1, etc. The Board's exhibits from the 2003 hearing will be referred to as B-1, etc.)

After the close of the evidentiary hearing, the parties filed post-hearing briefs. Panel B and Jones filed simultaneous briefs on June 16, 2003. Jones was granted leave to file a reply brief which he filed on July 15, 2003, at which time the record in this matter was closed.

Based on the evidence of the May 2002 hearing, the evidence of the May 2003 hearing, and the briefs of counsel, the ALJ makes the following recommended findings of fact and conclusions of law.

### **ANAYSIS**

This is a difficult matter to decide. This was not the impression after the first hearing, but it is now. Not only does this matter present some very difficult factual and legal questions but it also has an element of the present versus the future. It is tempting to let one's personal feelings rule in a case such as this one, but the decision maker must be guided by the facts and the law, the evidence and the legal argument. When the facts and the law are closely scrutinized and analyzed, as counsel have done in this matter, and, indeed, as the ALJ has done, the correct decision is not crystal clear. The ALJ strongly encourages Board members to read all three briefs filed in this matter. The Complainant's Post-Hearing Brief will be referred to as "Brief." Respondent's Post-Hearing Brief will be referred to as Respondent's Brief. Respondent's Reply Brief will be referred to as "Reply Brief." The ALJ has read them each twice and at least parts of each of them several times. Both attorneys did fine work in presenting this matter at hearing and in briefs.

Nevertheless, the ALJ is convinced, under the facts and law as determined and stated as a result of both hearings and the briefs of counsel that some form of disciplinary action against Dr. Jones is warranted because he has been engaging in a continued pattern of inappropriate care

(N.D.C.C. § 43-17-31(21), and he has been engaging in unprofessional conduct likely to deceive, defraud, or harm the public (N.D.C.C. § 43-17-31(6). He has violated the provisions of law that he is alleged to have violated.

Again, Jones did attend the second hearing. He showed himself to be a generally competent physician. It appears that in the bulk of his activities as a physician he has not run afoul of the law. It is only his internet practice, which is a small portion of his practice (*see* below), that has gotten him into trouble.

Panel B stated in its brief that Jones "participates in a prescription mill with websites that operate for profit and are guided by volume." Brief at 7. *See* FOF #22 below. Just looking on the surface and at the large numbers involved, one might agree, especially if one is predisposed to be suspicious of those operating by means of computers and the internet. But this matter is not just about high volume internet prescribing, though it certainly contains that aspect. It is primarily about whether the law is violated by what Jones is doing. The allegations of the Complaint are that he violated N.D.C.C. § 43-17-31(6), and (21) by engaging in the performance of dishonorable, unethical, or unprofessional conduct likely to harm the public, or by engaging in a continued pattern of inappropriate care. There are no other allegations involved. North Dakota law was not designed to necessarily contemplate internet practice. Yet, when distilled, this case seems to boil down to two issues, did Jones internet practice violate the community standard of care in the circumstances and is Jones' conduct in his internet practice unprofessional and likely to deceive, defraud, or harm the public? The ALJ finds no facts or law indicating that what Jones is doing is either generally or specifically dishonorable or unethical, at least by any standards of which he is aware.

In many states, more specific laws have been passed to deal with the internet prescribing concern. *See* B-9 (Internet Prescribing Overview by State). In some states, pursuant to more

specific laws, considerable action has been taken against doctors prescribing over the internet. North Dakota does not have specific laws on internet prescribing. North Dakota may wish to consider to, at least, adopting rules on the subject. This Complaint relies on the more general allegations of violation of N.D.C.C. § 43-17-31(6), and (21). Yet, the violations under these allegations are proven, by the greater weight of the evidence. There is factual and legal basis under North Dakota's laws for finding Jones in violation of the law.

Perhaps internet prescribing of medicine can have a future role in treating North Dakota patients, but Jones' internet prescribing practice as it currently exists does not and should not have a role.

The NET Doctor Group is not the subject of disciplinary action in this matter, but there has not been a showing that Jones can be distinguished from the operations of NET Doctor. Jones says he operates as though he has no connection to the operations of NET Doctor. However, Jones testifies that he was involved in developing at least part of the website. In fact, the evidence shows that Jones is an integral part of the NET Doctor Group operation. Without Jones, or some other physician, NET Doctor cannot operate. It is as though the right hand does not know what the left hand is doing.

### **FINDINGS OF FACT**

1. Jones is currently licensed to practice medicine in the state of North Dakota, under license No. 7255. *See* exhibits 1 and 2. Jones was also licensed to practice medicine in other states and, until this matter arose, he held licensure in numerous states throughout the United States. *See* exhibit 3. *See* Brief at 2-3. Some of his licenses have been revoked as a result of this North Dakota disciplinary action, including his license in his home state of

Missouri. Disciplinary action has been taken against him in some states, too, unrelated to the North Dakota action.

2. Jones attended Princeton University, received his medical training at Howard University Medical School and took postgraduate training in anatomical and clinical Pathology at Mayo Graduate School of Medicine and in General Surgery at Cleveland Clinic. He is board certified by the American Board of Pathology, in clinical and anatomic pathology, forensic pathology, and by the American Board of Forensic Examiners. He is the author of numerous peer-reviewed scientific papers, and has presented numerous continuing medical education lectures in various states. *See* exhibit R-10, Curriculum Vitae. Jones currently serves as a peer reviewer for Medical Laboratory Observer, a peer-reviewed journal for laboratorians.

3. Jones owns and operates Consultative and Diagnostic Pathology, providing pathology services almost literally throughout the United States. He also serves as medical director of two laboratory services, one in Illinois and one in Georgia. In addition to his pathology and surgical experience, Jones has served as an emergency physician and covered for a family practitioner, and is a certified instructor in advance cardiac life support.

4. Most of the licenses Jones has obtained were secured in order for him to provide *locum tenens* services. This was the case with his North Dakota license, issued in 1995.

5. Approximately 75% of Jones' practice consists of performing autopsies, 15% is as laboratory director, 5% involves medical-legal consultations, and 5% is the practice of internet medicine.

6. Jones admits prescribing "certain medications via the internet to patients" but he claims to be prescribing "only after obtaining appropriate information from the patient." Exhibit 5; *see* exhibits 4 and 17.

7. Jones has prescribed drugs on the internet through several web site vehicles, including "Net Doctor International" or the "NET Doctor Group." Exhibits 15 and 17.

8. Since 1998, Jones has served, without contract, as medical director of Net Doctor International which operates two websites, net-dr.com and maleclinic.com. He is not paid on a per-patient basis. Instead, he has a rather loose arrangement with the organization and he receives payment when cash flow permits. At one point Jones did not receive any payment at all for a two-year period. More typically, however, he receives a payment of approximately \$5,000 every other month. Jones testified that the payment process is handled by a direct deposit into his business account in a bank in Kansas City.

9. The NET Doctor Group is a private company which uses a physician-designed world wide web site to collect patient information and medical history relevant to prescribing certain prescription drugs. It uses a questionnaire or information form on the web site for this purpose. The physician is associated with but not employed by the NET Doctor Group. The physician reviews the provided medical history for the NET Doctor Group. Exhibit 17.

10. The way the web site works is, essentially, a prospective patient seeking one of six FDA-approved, non-narcotic medications completes a detailed questionnaire. *See* R-33. The drugs available from the NET Doctor web site include Viagra, Xenical, Propecia, Celebrex, Vaniqa, and Cipro. Company staff then screens the questionnaire. If it has been completed appropriately, it is forwarded to Jones or some other physician for review and possible issuance of a prescription of one of the medications. Jones testified that 90% of the prescriptions issued are for Viagra. Jones then reviews the questionnaire and determines whether and how much to prescribe to the patient. Occasionally, a follow-up telephone call to the patient is required to secure further information. Jones testified that in the beginning he used to call the majority of the prospective patients; however, he has not found a personal call to be necessary in the vast



majority of cases. He said the internet forms are complete and usually provided all of the essential information necessary to make an informed medical decision. Further, Jones testified that phone calls, when unnecessary, delay responsiveness to patient needs. Therefore, nowadays, such calls are much more infrequent, and more requests are quickly approved.

11. Jones testified that he has never been to the NET Doctor Group offices, does not know the names or the backgrounds or qualifications of any of its staff or other physicians. In addition, he testified that he does not have any knowledge of the pharmacies that dispense medications that he approves.

12. On April 25, 2002, an undercover North Dakota Bureau of Criminal Investigation agent, using a fictitious name, placed an internet order from Bismarck, North Dakota for the prescription drug Cipro with NET Doctor (Net Doctor International). Testimony of BCI Agent and Exhibit 15. The agent filled out the questionnaire or form on the web site providing certain requested information. The agent's credit card was billed by NET DOCTOR GROUP, \$50.00 for the onsite consultation fee and \$150.00 for the Cipro prescription. Exhibit 15. The package containing the Cipro prescription was shipped to the agent. *Id.* All of the information that the agent placed on the form was correct, except his name and address was fictitious. He used an undercover name and address. There was no place on the form used by the agent where a purchaser could indicate why he needed the drug Cipro. *Id.* The agent was able to order what he wanted for dosage and number of tablets. The shipper of the package of the Cipro prescription to the agent was shipping from a drop box in California. The agent was not contacted by any physician, pharmacist, or representative of NET Doctor, or any pharmacy, regarding his purchase of Cipro.

13. Panel B received a printout through a Pennsylvania investigative agency showing all of the prescription drugs approved and prescribed by Jones through a Community Drug of

Pittsburgh PA, during the time period of July 7, 1998, through November 27, 2000. Exhibit 18.

The printout shows, on page 140, that on February 8, 2000, a prescription was filled by

Community Drug, prescribed by Jones, for 90 capsules of Xenical to a person in Bismarck, ND.

*Id.* Community Drug has been one of the pharmacies used in the internet operations participated in by Jones. *See e.g.*, exhibits 12, 13, and 14.

14. In June 1999, the State of Kansas, through its Attorney General and the Kansas Board of Pharmacy brought an action in the District Court of Shawnee County Kansas against Jones and others, alleging, *inter alia*, that Jones prescribed Viagra for Angelia Crawford in the State of Kansas without conducting an examination or actual consultation to determine medical need for Viagra and to explain the proper administration, potential side effects, dangers and contraindications of Viagra; and that Jones engaged in the practice of the healing arts within Kansas by prescribing and ordering prescription-only medications, including Viagra, to persons located within the State of Kansas, and that he had not been licensed to engage in the practice of the healing arts in violation of Kansas law. Exhibit 7; *see* exhibit 6, affidavits of Angelia Crawford, with attachments from the internet, etc.

15. Pursuant to Motion for Judgment by Default, on October 29, 2001, the District Court of Shawnee County Kansas entered a Journal Entry of Default Judgment against Jones and others finding and concluding, *inter alia*, that Jones did not file an answer in the state's action, ordering that judgment be entered against Jones for engaging in unlawful unconscionable acts and practices in violation of the Kansas Consumer Protection Act, enjoining Jones from engaging further in unconscionable acts and practices, enjoining Jones from unlawful advertising, sell, prescribing, dispensing, and delivering of prescription-only drugs to consumers in Kansas, and assessing a \$10,000 civil penalty against Jones. Exhibit 7.

16. In January 2002, Jones, through counsel, filed a "Motion to Set Aside Default Judgement" (*sic*) and "Memorandum in Support of Motion to Set Aside Default Judgement" (*sic*) in

the District Court of Shawnee County, Kansas. Exhibit 7. There was no evidence offered at either hearing as to the final disposition of this motion. But *see State es rel. Stovall v. Confirmed.com*, 38 P. 2d 707 (Kansas 2002), cited and quoted in Respondent's Brief at 16-17.

17. In an affidavit attached to the above January 2002 memorandum, Jones admits providing medical expertise, consultation and services to an independently owned and operated website where individuals may request prescription medications. He admits that Angelia, a female, accessed the website and completed a questionnaire; that she requested a prescription for Viagra, complaining of difficulty reaching arousal; that he personally reviewed the questionnaire; and that utilizing his medical expertise he determined the prescription would be appropriate, prescribing 10 tablets of Viagra. Exhibit 7.

18. On January 21, 2002, Steven Rohland, a Consumer Protection Investigator with the Wisconsin Department of Regulation and Licensing completed a questionnaire at the internet site "Net-Dr," and ordered Viagra, 10 tablets, for \$99.00, plus a \$50.00 consultation fee. He did not speak on the phone with anyone and no physician called him. On January 28, 2002, he received a prescription bottle containing 10 Viagra tablets from Giannotto's Pharmacy in Newark, NJ. The physician listed is Miles Jones, DEA # BJ0839540. That DEA number belongs to Dr. Miles J. Jones of Lee's Summit, MO. Exhibit 8; testimony of Steven Rohland. Besides alleging the above activity, one of the allegations of the subsequent Complaint filed by the State of Wisconsin against Jones was that a 14 year old under FBI supervision was able to obtain, with the use of a credit card, a prescription for Viagra from "Net-Dr," prescribed by Jones as the reviewing physician. Testimony of Mr. Rohland. At the second hearing Jones did not deny that he prescribed Viagra to a 14 year old but attempted to justify it rather than stating that this instance was an aberration of his own established protocol.

19. On July 25, 2001, James G. Rawson, Project Coordinator, Internet Clearinghouse, Federation of State Medical Boards of the United States, Inc., completed a questionnaire at the internet site "Net-Dr" and ordered Xenical (weight loss medication), 90 tablets (3 refills), for \$145.00, plus a \$50.00 consultation fee. He did not speak on the telephone to anyone and a physician did not contact him. A pharmacy filled the prescription and mailed it to him. Jones prescribed the Xenical for Rawson. Exhibit 9. *See* exhibit 11, November 13, 2001, Jones letter (he admits filling the prescription to Rawson).

20. On August 3, 1999, Investigator Ann E. Meredith conducted a search of the internet for web sites purporting to sell Viagra (PLD) and other popular PLDs. Exhibit 12. *See* also 13, 14, and 18, and testimony of Ann E. Meredith, Investigator, State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Enforcement Bureau. Meredith identified American Medicine.com as one such entity. On August 4, 1999, Meredith, using the fictitious identity of Mary Czubek, completed an American Medicine Online Consultation form, answered several health-related questions and then ordered 90 Xenical capsules over the internet. The total cost of the order was \$235.00, including a \$70.00 consultation fee, \$150.00 for the medication, and \$15.00 for shipping. Immediately after submitting the form, she received a screen response indicating her request was received and would be evaluated by a U.S. licensed physician within one business day. On August 5, 1999, she received two e-mail messages from American Medicine indicating that she was approved to receive Xenical and that her credit card would reflect a charge to "A Fresh Life" in California. On August 11, 1999, Meredith again visited the American Medicine web site using the fictitious identity of John Czubek. She completed an American Medicine Online Consultation form, answered several health-related questions and then ordered 60 Zyban tablets (smoking cessation medicine) over the internet. The total cost of the order was \$191.50, including a \$70.00

consultation fee, \$102.50 for the medicine, and \$19.00 for shipping. Immediately after submitting the form, she received a screen response indicating her request was received and would be evaluated by a U.S. license physician within one business day. The response further stated that she would be notified of the outcome of the consultation within two business days. On August 17, 1999, she received an e-mail message from American Medicine, dated August 12, 1999, indicating that she was approved to receive Zyban and that her credit card would reflect a charge to "A Fresh Life" in California.

On August 6, 1999, Meredith received a package containing Xenical. The prescribing physician was listed as "Dr. Jones, M." On August 18, 1999, Meredith received a package containing Zyban. The prescribing physician was listed as "Dr. Jones, M." *See* Exhibit 13 (investigators in New Jersey determined that "Dr. Jones, M" was Dr. Miles Jones of Lee's Summit, MO); *see* also testimony of G. Robert Kern, State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs.

On the questionnaire forms submitted for obtaining the Xenical and Zyban, Meredith purposely did not respond to some of the questions, *i.e.*, she left the form incomplete. Meredith testified that she wanted to see if the form would be accepted even though it was incomplete. No one contacted Meredith to inquire about questions that were unanswered and a physician did not contact her.

21. At the second hearing, Jones acknowledged that the internet is a tool that can be used by good physicians to do good things and by bad physicians to do bad things.

22. At the second hearing, Jones admitted to approving 15,000 prescriptions in 2002. This seems to be a very high number given that he also testified that he only spends about 5% of his time on internet prescribing. If Jones worked 80 hours per week, and worked every week during the 52 weeks of 2002, he would have spent 208 hours ( $.05 \times 80 \times 52$ ) on his internet

prescribing work, approving 15,000 prescriptions. It is likely, therefore, that Jones approved at least 72 prescriptions per hour working on internet prescribing in 2002, perhaps considerably more (15,000 divided by 208). It is obvious that not much thought and attention can be given to each patient if one is reviewing 72 questionnaires per hour, especially reviewing the lengthy questionnaires in evidence in this hearing. However, the evidence shows that the initial screening on the questionnaires is done by people that Jones knows nothing about. Although Jones points to the possibility of give and take and an exchange of information on the internet, and it is common knowledge that the possibility exists, the evidence in this matter shows that it remains just a possibility. In fact, little if any exchange of information or give and take between the physicians exists in Jones' internet practice. Even he admits that.

23. There is inherently, and in the actual practice of Jones, a greater potential for falsification, deceit and fraud by both the patient and the physician because there is no contact between them whatsoever, except occasionally by a telephone, though that is within the doctor's complete discretion. Again, greater possibility for contact perhaps exists but was not evident in Jones' practice. Of course, neither the patient nor doctor can see, hear, or touch the other. If the doctor does not desire it, there is no further contact other than the initial internet contact. If the patient wishes, he may deceive the doctor in various ways without the doctor even having a chance to see and evaluate the patient, traditionally. Granted, deception can occur in any examination venue, but the internet, the evidence shows, holds the greatest potential for deception. *See* examples of in FOF #s12-20. It is easily possible that patient welfare will be the last consideration in a computer drug prescribing process. This appears to be the situation with Jones' practice. In this matter, it is especially difficult to reconcile Jones' general concern with the possibilities for falsification in any scenario involving prescribing, including internet prescribing, with his actual attitude and approach of hands off and see no evil, when it comes to

his knowledge of the people he relies on for screening. It would be a subject of discipline, too, if someone in a traditional practice setting were entrusting the care of their patients to unknown persons, such as assigning responsibilities of screening questionnaires and forwarding prescriptions to obscure pharmacies.

24. Very little information and disclosure are given to allow a patient to be appropriately informed, if they choose, about who and what they are dealing with. *See* exhibit B-4, at 4-5, especially "Model Guidelines for the Appropriate use of the Internet in Medical Practice," "Disclosure" The owners of the NET Doctor website are not identified on the website. Neither is there an office address given with contact information. No information is given about the licensure and qualifications of the physicians that are associated with the website. The first time patient, especially, really does not know with whom he is dealing with, and lacks other valuable information that can be more easily obtained traditionally, if the patient is interested, and could possibly be obtained from a well designed and operated website.

25. Guy Tangedahl, M.D., Bismarck, a family practitioner testified as an expert witness for Panel B at both hearings. He reviewed most of the exhibits entered into evidence in this matter involving the Complaint against Jones and said that he was familiar with the practice of prescribing drugs over the internet. He said that his concerns about this practice were the inherent dangers of prescribing medicine to people that the physician does not know (he said there is no doctor/patient relationship in internet prescribing), the heightened risk of dispensing medicines for inappropriate uses, and the ease of obtaining prescription drugs over the internet. He said that adequate safeguards need to be in place for internet prescribing of drugs to prevent abuses. He said that adequate safeguards were not in place for the cases he reviewed in which Jones was involved. Dr. Tangedahl did not state what safeguards need to be in place to allow internet prescribing of drugs, however.

26. Dr. Tangedahl further testified that Jones breached the standard of care required, *i.e.*, community standards, in North Dakota for physicians prescribing drugs; Jones' actions have the potential to place his patients at risk; and, basically, Jones provided inappropriate care to his internet patients. He further testified that by prescribing drugs over the internet, Jones engaged in unprofessional conduct likely to deceive, defraud, or harm the public. `

27. Dr. Tangedahl stressed that prescribing Viagra for a teen, *e.g.*, a 14 year old, would not only be contrary to acceptable medical practice, but would also require more intense physician intervention for unknown causes.

28. Dr. George Porter and Dr. William Vilensky, both testified as experts for the Board. *See* exhibit B-2 and B-3, Curriculum Vitae. Both testified that internet prescribing based solely on a questionnaire is inappropriate. Dr. Porter cited four points to consider in establishing a physician/patient relationship. *See* Brief at 4. He said that an important concept is that of "informed consent" by the patient. He said a determination needs to be made that the patient actually understands all aspects of the existing medical circumstances to support the treatment or offering of medication. Dr. Porter stressed that the internet process lacks the ability to pursue questions in a give and take exchange, and to arrive at a confirmation of facts which have been given to the physician by the patient. According to Dr. Porter, in order to prescribe medications, a physician must first determine whether a traditional physician/patient relationship exists. He noted the exceptions to this requirement as being an emergency room situation, the actions of a consultant, or the issuance of a prescription to a patient of a physician who the prescribing physician personally knows.

29. Dr. Henry Jones and Dr. Bernard Bloom, PH.D., testified as experts for Jones. *See* exhibits R-31 and R-32, Curriculum Vitae. Dr. Bloom asserts that the information he has compiled indicates that internet prescribing practices constitute an acceptable standard of care.



Dr. Henry Jones supported Jones' contention that there is no danger in internet prescribing as practiced by Jones. Dr. Henry Jones stated that therapeutic communication is the basis for any doctor/patient relationship and that the internet can accomplish the same goal as a personal physician/patient contact. However, Dr. Henry Jones agreed that the standard of care established by medical boards across the United States uniformly prohibits internet prescribing bases solely upon a questionnaire.

30. Even Jones admits that there is a need for regulation and oversight of internet prescribing. He claims there is none to date. There are model guidelines. Exhibit B-4. Jones' internet prescribing and the operation with which he is involved (NET Doctor, etc.) do not adhere to the model guidelines. There is no indication that Jones is interested in adhering to guidelines. He is obviously not willing to wait for guidelines to be formally established locally and goes ahead with his internet prescribing, without waiting for guidelines, despite the furor it causes with regulators.

31. Perhaps it is easier and more private for a patient to answer internet questions, as Jones claims. A patient can certainly take as long or as little time as he desires. However, the same can be said for reviewers, both staff and physician. In fact, one can prescribe without reading the questionnaire if one wishes; one does not have to see anything, least of all the patient. If an operation is purely bogus, and the evidence does not show that Jones' operation has no legitimacy, whatsoever, one can truly run a prescription mill.

32. There was no evidence of actual harm to any Jones' internet patients occurring in this matter.

### **CONCLUSIONS OF LAW**

1. Jones is currently licensed to practice medicine in the State of North Dakota under the provisions of N.D.C.C. ch. 43-17. As such his practice of medicine in North Dakota is

subject to the provisions of N.D.C.C. chs. 43-17 and 43-17.1, including those provisions relating to disciplinary action found in N.D.C.C. §§ 43-17-30.1 and 43-17-31.

2. N.D.C.C. § 43-17-31 states, in part, as follows:

43-17-31. **Grounds for disciplinary action.** Disciplinary action may be imposed against a physician upon any of the following grounds:

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6. The performance of any dishonorable, unethical or unprofessional conduct likely to deceive, defraud, or harm the public.

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21. A continued pattern of inappropriate care as a physician ...

3. Jones has repeatedly written prescriptions for patients over the internet, including North Dakota patients, without first examining the patient or obtaining all appropriate information from the patient. He approves the prescriptions of numerous patients each hour he works on internet prescribing. Although it may be possible to appropriately prescribe over the internet in North Dakota, it is clear that Jones' current actions in doing so place patients in North Dakota and elsewhere at risk. It is obvious that Jones's patients are simply lost in the volume and maze of the computer driven process. Again, although it may be possible to write prescriptions for patients over the internet if adequate safeguards are in place, adequate safeguards were not in place for Jones to write prescriptions in the cases that are the subject of this Complaint.

Accordingly, the evidence shows, by the greater weight of the evidence, that while licensed as a North Dakota physician, Jones has engaged in a continued pattern of inappropriate care for patients in North Dakota and elsewhere within the meaning of N.D.C.C. § 43-17-31(21); and Jones has engaged in the performance of unprofessional conduct that is likely to deceive, defraud, or harm the public within the meaning of N.D.C.C. § 43-17-31(6). At the very least, Jones is providing inappropriate care for patients by prescribing drugs for them over the internet

without adequate safeguards, and, at times, without adequate information. Also, prescribing drugs for patients over the internet without adequate information or adequate safeguards is unprofessional conduct that is likely to deceive, defraud, or harm the public. It is not necessary that actual harm, fraud, or deceit caused by Jones be shown. It is sufficient that harm, fraud, or deceit is likely to be caused by him because of his internet activities. In this case, the evidence is clear that harm, fraud, or deceit is likely to be caused.

4. N.D.C.C. § 43-17-30.1 authorizes the Board to impose one or more of several types of disciplinary action against Jones, including revocation and letter of censure, for proven violations of N.D.C.C. § 43-17-31, and including the imposition of fines not to exceed five thousand dollars for any one disciplinary action. N.D.C.C. § 43-17-30.1(1), (5), and (7).

5. N.D.C.C. § 43-17-31.1 authorizes the Board in disciplinary proceedings in which disciplinary action is imposed against a physician to also direct the physician to pay to the Board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panels in the investigation and prosecution of the case.

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Jones violated the provisions of N.D.C.C. § 43-17-31(6) and (21). At the conclusion of the evidentiary portion of the first hearing, counsel for Panel B recommended that because of the proven violations the Board revoke Jones' North Dakota license. Counsel continues to make that recommendation after the second hearing. The ALJ encourages the Board to review Jones' brief in regard to remedy. Respondent's Brief at 22-25. The ALJ concurs with counsel for Panel B that discipline of Dr. Jones is warranted. What the appropriate discipline should be ordered is another matter considering the arguments made by Jones' counsel and the fact that North Dakota does not have specific rules on internet

prescribing. Of most significance, in the ALJ's mind, is the fact that there was no actual harm shown and that Jones' internet practice is a small portion of his total practice. The ALJ does not believe that revocation is appropriate at this time. Instead, the ALJ recommends that the Board impose a fine not to exceed five thousand dollars (\$5,000) on Jones for the violations of N.D.C.C. § 43-17-31 proven. If the Board orders Jones to pay a fine, the Board shall indicate by separate letter the amount of the fine it will impose, as well as the manner and terms of payment. The ALJ further recommends that the Board order Jones to pay a sum, to be determined by the Board, not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of this case under N.D.C.C. § 43-17-31.1. If the Board orders Jones to pay reasonable and actual costs, it shall indicate by separate letter attached to its final order an amount and the manner and terms for payment of those costs. Finally, the ALJ further recommends that the Board issue a letter of censure to Jones and that in its letter the Board state, among other things, that if Jones is found to be in further violation of N.D.C.C. § 43-17-31(6) and (21), with regard to internet prescribing in North Dakota, after the date of its order, that his license to practice medicine in North Dakota will be revoked.

Dated at Bismarck, North Dakota, this 25th day of July, 2003.

State of North Dakota  
Board of Medical Examiners

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